

ORIGINAL

Before the
Federal Communications Commission
Washington D.C. 20554

FILED/ACCEPTED

MAY 20 2008

Federal Communications Commission
Office of the Secretary

In the Matter of

Advance Television Systems and
Their Impact Upon the Existing
Television Broadcast Service

MM Docket No. 87-268

To: Office of the Secretary
Attn: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

Barrington Traverse City License LLC ("Barrington"), licensee of WPBN-TV/DT ("WPBN"), Traverse City, Michigan, by its attorneys, hereby submits its Opposition to the Petition for Reconsideration (the "Petition") filed by WOOD License Company, LLC ("Wood License") in the above captioned proceeding.¹ Wood License is the licensee of Station WOOD-TV/DT ("WOOD"), Grand Rapids, Michigan. Stations WPBN and WOOD are both assigned Channel 7 for post-transition digital operations. Wood License claims that the post-transition Appendix B facility for WPBN proposed by the Commission in the *Seventh MO&O* will cause impermissible interference to WOOD's post-transition facility.² This is incorrect. In fact, the digital parameters proposed for WPBN in the *Seventh MO&O* will cause *less* interference to WOOD post-transition than is caused currently by the WPBN analog facility. Thus, Wood

¹ Public Notice of Wood License's Petition for Reconsideration was published in the Federal Register on May 5, 2008. See 73 Fed. Reg. 24596. Thus, this Opposition is timely. See *id*; see also 47 C.F.R. § 1.429(e).

² See *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order and Eighth Report and Order, 23 FCC Rcd 4220, ¶¶ 49-51 (2008) ("*Seventh MO&O*").

License's Petition is without merit and must be denied.³ In support hereof, Barrington states as follows:

In the *Seventh Report and Order* in MM Docket No. 87-268, the Commission allotted Channel 7 to WPBN for post-transition operation.⁴ In an October 26, 2007 Petition for Reconsideration of the *Seventh R&O*, Barrington sought revised technical parameters for WPBN's post-transition operations in order to operate at the coordinates and height of its Channel 7 analog operation, using its analog antenna. This change would permit Barrington to provide service to a significant number of persons served by the WPBN analog facilities who would lose service if Barrington implemented the post-transition facilities allotted in the *Seventh R&O*. In its *Seventh MO&O* the Commission granted Barrington's request.⁵ In doing so it also denied an opposition filed by Wood License which claimed that the post-transition WPBN facilities would cause impermissible interference to WOOD. The Commission disagreed with Wood License's analysis, specifically finding that "it recalculated Appendix B facilities for WPBN ...and performed an interference analysis based on these recalculated Appendix B facilities. The Commission's interference analysis shows no *new* interference from the revised Appendix B facilities for WPBN to WOOD or any other station."⁶ Wood License, however, not satisfied with the Commission's decision, filed the instant Petition raising the same issue.⁷

³ Wood License also filed an Informal Objection to Barrington's application to implement WPBN's Appendix B facilities. See BPCDT-20080321ACW. Barrington will be filing its Opposition to the Informal Objection in the near future.

⁴ See *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Seventh Report and Order and Eighth Further Notice of Proposed Rule Making, 22 FCC Rcd 15581 (2007) ("*Seventh R&O*").

⁵ See *Seventh MO&O*, 23 FCC Rcd ¶¶ 49-51.

⁶ *Id.* (emphasis added).

⁷ The Commission should not even consider Wood License's Petition because it merely reargues an issue that the Commission already considered. See *S&L Teen Hospital Shuttle*, 17 FCC Rcd 7899, 7900 (2002) ("Reconsideration will not be granted merely for the purpose of again debating matters on which the Commission has already deliberated and decided.").

The only issue raised by Wood License in its Petition is whether the WPBN Appendix B post-transition digital facility will cause unique interference to WOOD's post-transition digital facility.⁸ However, contrary to Wood License's assertion, the interference is not unique because Wood License's calculations are based on a fundamental flaw. They fail to take into consideration existing interference; that is the interference already experienced by WOOD's post-transition facility from WPBN's analog operation. When this existing interference is used as the baseline, the interference caused by WPBN's Appendix B facilities to WOOD is actually reduced.

The Commission has expressly stated that it will take into account the current levels of interference received by a station and establish this as a baseline when calculating the amount of *new* interference that a station will receive from a modification to another station. More specifically, the methodology used by the Commission to determine new interference to post-transition facilities defines *new interference* as "interference beyond that caused by NTSC and DTV operations."⁹ Thus, the interference that currently exists between WPBN's analog operation on Channel 7 and WOOD's digital operation on Channel 7 is the baseline for determining any new interference caused by WPBN's Appendix B facilities. As the Commission concluded in its *Seventh MO&O*, the Appendix B facilities cause no new interference to

⁸ Wood License's Petition contains as an attachment and incorporates by reference Wood License's Informal Objection to Barrington's application to implement WPBN's Appendix B facilities. See BPCDT-20080321ACW. In its Informal Objection, Wood License claims that grant of the application will "cause unique interference to 101,532 persons within WOOD-DT's interference-free service population – 4.6 percent of WOOD's service population." Informal Objection at p. 4 (emphasis added).

⁹ *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd 18279, ¶ 37 (2004) (emphasis added).

WOOD.¹⁰ Thus, the Appendix B facilities are in compliance with the Commission's rules and policies and Wood License does not raise any technical or legal issues to prove otherwise.

As discussed above, Wood License's claim of interference is misguided because any interference between the post-transition operation of the two stations is interference that already exists. In contrast, it is important to note that even with the expanded facilities specified in Appendix B, a significant number of WPBN's analog viewers will lose service. In fact, the Appendix B parameters represent a reduction in population in comparison to the population located within WPBN's current analog Grade B contour.¹¹

In summary, the WPBN Appendix B facilities are in compliance with the Commission's rules and policies. Accordingly, for the foregoing reasons, Barrington respectfully requests that the Commission deny Wood License's Petition.

¹⁰ Wood License acknowledges this preexisting interference in its Petition. *See* Informal Objection at p. 2 (attached to the Petition). In fact, in its 2002 application for a construction permit to construct its post-transition digital facilities, Wood License recognized the existing interference between WOOD's digital operation and WPBN's analog operation and actually increased the interference by 1.42%. *See* BMPCDT-20021122AAE, Technical Exhibit. Wood License also claims that had it "been aware that WPBN would seek to use its analog channel 7 antenna as its post-transition digital facility, it could have considered alternatives for WOOD's post-transition facility." *See* Informal Objection at p. 2, note 1 (attached to the Petition). This argument is nothing more than a red herring and suggests, without justification, that the procedures the Commission established for the digital channel election process should not govern in this case. This is neither the time nor the forum for a referendum on the channel election process. Further, Barrington became the licensee of WPBN on August 11, 2006 (*see* BALCT-20060407ABU). Accordingly, all filings relating to the WPBN digital channel election process were completed by the prior licensee of the station, including the pre-election certification (Form 381) filed on November 3, 2004 (*see* BCERCT-20041103AHR) and the request to return to WPBN's analog Channel 7 for post-transition DTV operations submitted on January 19, 2005 (*see* BFRECT-20050119AES).

¹¹ *See* Comprehensive Technical Exhibit appended to BPCDT-20080321ACW.

Respectfully submitted,

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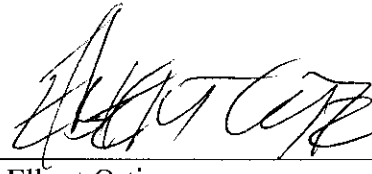
Dated: May 20, 2008

Certificate of Service

I, Elbert Ortiz, in the law firm Wiley Rein LLP, hereby certify that, on this 20th day of May 2008, a copy of the foregoing **Opposition** was sent via first class mail, postage pre-paid to:

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A handwritten signature in black ink, appearing to read 'Elbert Ortiz', is written over a horizontal line.

Elbert Ortiz